

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

CAROL BURGASSER,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

) Case No. RED-01-0021

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on February 21, 2002.

1.2 **Appearances.** Appellant Carol Burgasser appeared *pro se*. Lawrence W. Paulsen, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a one-month, five percent reduction in pay for neglect of duty, insubordination and gross misconduct for Appellant's failure to work a voluntary overtime assignment.

1.4 Citations Discussed. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995).

II. FINDINGS OF FACT

2.1 Appellant Carol Burgasser is a Correctional Officer 2 and permanent employee for Respondent Department of Corrections. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on June 5, 2001.

2.2 By letter dated May 7, 2001, Carol Porter, Superintendent of the Washington Corrections Center, informed Appellant of a one month, five percent reduction in salary effective May 24, 2001 through June 23, 2001. Superintendent Porter charged Appellant with neglect of duty, insubordination and gross misconduct, specifically alleging that Appellant refused to work an overtime assignment after she placed her name on a voluntary overtime sign-up sheet.

2.3 The facts of this case are not in dispute. On February 7, 2001, Appellant signed a Voluntary Overtime sign-up sheet. Appellant's signature on the sheet affirmed her eligibility to work in compliance with article 17 of the Collective Bargain Agreement, which states that employees on the list cannot refuse the assignment of overtime and may remove their names from the list only prior to the assignment of overtime. An employee can refuse overtime if he/she or a supervisor finds the employee is not fit for duty (e.g. overly tired) or has childcare or medical reasons. In those instances, the shift sergeant makes a determination on a case-by-case basis of whether the employee is unable to work overtime.

2.4 On February 14, 2001, Sergeant Larry Frahman contacted Appellant, who was the most senior employee on the overtime list, and directed her to report to work for overtime in the facility's intensive management unit (IMU). Appellant told Sergeant Frahman that she objected to working in the IMU and would not report to work the overtime assignment. Appellant routinely volunteered

1 to work overtime and it was the first time that she refused an overtime assignment. Appellant
2 understood that she could not refuse to work overtime unless there were mitigating circumstances.
3 However, Appellant believed that there were other alternative overtime posts available on February
4 14, and she felt that Sergeant Frahman was saving jobs for selected individuals. Appellant told
5 Sergeant Frahman to “do what you have to do.”

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7 2.5 Sergeant Frahman called the next senior employee on the overtime list and he informed his
8 supervisor of Appellant’s refusal to report for the overtime assignment. Sergeant Frahman
9 subsequently initiated an Employee Conduct Report alleging that Appellant refused a direct order to
10 work overtime after adding her name to the overtime list. Dennis Simmons, Custody Unit
11 Supervisor, conducted an investigation and forwarded the results to the superintendent.

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13 2.6 Carol Porter, Superintendent of Washington Corrections Center, was Appellant’s appointing
14 authority. After reviewing the results of the ECR, Ms. Porter concluded that Appellant neglected
15 her duty and was insubordinate when she refused a directive to work overtime despite her
16 knowledge of the institution’s policy and practice on overtime. Ms. Porter met with Appellant prior
17 to determining the level of discipline and considered Appellant’s concerns regarding overtime
18 assignments. However, Ms. Porter did not believe that Appellant’s concern mitigated her actions or
19 the level of defiance she displayed when refusing Sergeant Frahman’s directives. Ms. Porter also
20 considered information that Appellant had been an employee of the institution since 1981, had a
21 record of good work performance, and understood the overtime policy. In addition, Ms. Porter
22 weighed three previous letters of reprimand issued to Appellant.

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24 2.7 Ms. Porter wanted to impress on Appellant the importance of following supervisory
25 directives because the nature of working in a correctional facility requires that staff follow the
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1 directives and orders of superiors to ensure the safety and security of the institution. Therefore, Ms.
2 Porter concluded that a five percent reduction for one month was the appropriate sanction.

3 4 **III. ARGUMENTS OF THE PARTIES**

5 3.1 Respondent argues that once Appellant signed up for overtime, she understood that she was
6 required to make herself available unless there were extenuating circumstances which prevented her
7 from reporting to work. Respondent asserts that the directive Sergeant Frahman gave to Appellant
8 to report to work overtime was not unlawful or endangering to her health. Respondent argues that
9 Appellant had other avenues to pursue even if she felt the directive was questionable. Respondent
10 asserts that five percent reduction in pay for one month was a reasonable sanction for Appellant's
11 refusal to follow a lawful order.

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13 3.2 Appellant asserts that she is a good employee and that the superintendent failed to review
14 and take into consideration her history of good performance and qualities. Appellant acknowledges
15 that she has worked many hours of overtime and understood the institution's overtime practices.
16 However, Appellant asserts that eight employees had called in sick that morning and that her
17 purpose for refusing the assignment was to address a history of assigning jobs for certain
18 individuals. Appellant asserts that she had addressed her concerns with the captain who had
19 assured her that he was going to take care of the overtime problems. Appellant asserts, however,
20 that the problems were not addressed. Appellant asserts that she was treated unfairly, that other
21 officers who refused to work voluntary overtime were not disciplined, and she asserts that she did
22 not receive the most recent copy of the CBA.

23 24 **IV. CONCLUSIONS OF LAW**

25 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
26 herein.

1 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
2 the charges upon which the action was initiated by proving by a preponderance of the credible
3 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
4 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
5 Corrections, PAB No. D82-084 (1983).

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7 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
8 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
9 of Social & Health Services, PAB No. D86-119 (1987).

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11 4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior
12 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.
13 Dep't of Social & Health Services, PAB No. D94-025 (1995).

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15 4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
16 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

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18 4.6 Respondent met its burden of proof that Appellant neglected her duty and was insubordinate
19 when she failed to follow a lawful directive from Sergeant Frahman to report for an overtime
20 assignment. Appellant understood the institution's procedures on overtime and was aware that she
21 could not refuse to work an assignment of overtime unless she had a justifiable reason to do so.
22 Appellant provided no convincing factors to mitigate her actions. Although Appellant had concerns
23 that overtime assignments were being assigned on an inconsistent and unfair basis, she failed to
24 follow the appropriate steps to address her concerns with management. Respondent has failed to
25 prove, however, that Appellant's actions interfered with its ability to carry out its functions or rose
26 to the level of gross misconduct.

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2 4.6 Based on Appellant's knowledge of the overtime policy and her disregard of a lawful
3 directive, we conclude that the disciplinary action imposed was appropriate. Therefore, the appeal
4 should be denied.

5
6 **V. ORDER**

7 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Carol Burgasser is denied.

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9 DATED this _____ day of _____, 2002.

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11 WASHINGTON STATE PERSONNEL APPEALS BOARD

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13 _____
14 Walter T. Hubbard, Chair

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17 Gerald L. Morgen, Vice Chair
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